

105TH CONGRESS
2D SESSION

S. 2460

To curb deceptive and misleading games of chance mailings, to provide Federal agencies with additional investigative tools to police such mailings, to establish additional penalties for such mailings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 1998

Mr. LEVIN (for himself and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To curb deceptive and misleading games of chance mailings, to provide Federal agencies with additional investigative tools to police such mailings, to establish additional penalties for such mailings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DECEPTIVE GAMES OF CHANCE MAILINGS**
4 **ELIMINATION.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Deceptive Games of Chance Mailings Elimination Act of
7 1998”.

8 (b) NONMAILABLE MATTER.—

1 (1) IN GENERAL.—Section 3001 of title 39,
2 United States Code, is amended—

3 (A) by redesignating subsections (j) and
4 (k) as subsections (k) and (l), respectively; and

5 (B) by inserting after subsection (i) the
6 following:

7 “(j)(1) Matter otherwise legally acceptable in the
8 mails that constitutes a solicitation or offer in connection
9 with the sales promotion for a product or service or the
10 promotion of a game of skill that includes the chance or
11 opportunity to win anything of value and that contains
12 words or symbols that suggest the recipient will, or is like-
13 ly to, receive anything of value, shall conform with require-
14 ments prescribed in regulations issued by the Postmaster
15 General.

16 “(2) Matter not in conformance with the regulations
17 prescribed under paragraph (1) shall not be carried or de-
18 livered by mail and shall be disposed of as the Postal Serv-
19 ice directs.

20 “(3) Regulations prescribed under paragraph (1)
21 shall require, at a minimum, that—

22 “(A) promotion of games of chance mailings
23 contain notification or disclosure statements, with
24 sufficiently large and noticeable type to be effective
25 notice to recipients that—

1 “(i) any recipient is not obligated to pur-
 2 chase a product in order to win;

3 “(ii) sets out the chances of winning accu-
 4 rately; and

5 “(iii) advises that purchases do not en-
 6 hance the recipient’s chances of winning;

7 “(B) games of chance mailings shall be clearly
 8 labeled to—

9 “(i) identify such mailings as games of
 10 chance mailings; and

11 “(ii) prohibit misleading statements rep-
 12 resenting that recipients are guaranteed win-
 13 ners; and

14 “(C) solicitations in games of chance mailings
 15 may not represent that the recipient is a member of
 16 a selected group whose chances of winning are en-
 17 hanced as a member of that group.”.

18 (2) FALSE REPRESENTATIONS.—Section
 19 3005(a) of title 39, United States Code, is amend-
 20 ed—

21 (A) in the first sentence by striking “sec-
 22 tion 3001 (d), (h), or (i)” and inserting “sec-
 23 tion 3001 (d), (h), (i), or (j)”; and

1 (B) in the second sentence by striking
 2 “section 3001 (d), (h), or (i)” and inserting
 3 “section 3001 (d), (h), (i), or (j)”.

4 (c) ADMINISTRATIVE SUBPOENAS.—

5 (1) IN GENERAL.—Chapter 30 of title 39,
 6 United States Code, is amended by adding at the
 7 end the following:

8 **“§ 3016. Administrative subpoenas**

9 “(a) AUTHORIZATION OF USE OF SUBPOENAS BY
 10 POSTMASTER GENERAL.—In any investigation conducted
 11 under this chapter, the Postmaster General may require
 12 by subpoena the production of any records (including
 13 books, papers, documents, and other tangible things which
 14 constitute or contain evidence) which the Postmaster Gen-
 15 eral finds relevant or material to the investigation.

16 “(b) SERVICE.—(1) A subpoena issued under this
 17 section may be served by a person designated under sec-
 18 tion 3061 of title 18 at any place within the territorial
 19 jurisdiction of any court of the United States.

20 “(2) Any such subpoena may be served upon any per-
 21 son who is not to be found within the territorial jurisdic-
 22 tion of any court of the United States, in such manner
 23 as the Federal Rules of Civil Procedure prescribe for serv-
 24 ice in a foreign country. To the extent that the courts of
 25 the United States may assert jurisdiction over such person

1 consistent with due process, the United States District
2 Court for the District of Columbia shall have the same
3 jurisdiction to take any action respecting compliance with
4 this section by such person that such court would have
5 if such person were personally within the jurisdiction of
6 such court.

7 “(3) Service of any such subpoena may be made by
8 a Postal Inspector upon a partnership, corporation, asso-
9 ciation, or other legal entity by—

10 “(A) delivering a duly executed copy thereof to
11 any partner, executive officer, managing agent, or
12 general agent thereof, or to any agent thereof au-
13 thorized by appointment or by law to receive service
14 of process on behalf of such partnership, corpora-
15 tion, association, or entity;

16 “(B) delivering a duly executed copy thereof to
17 the principal office or place of business of the part-
18 nership, corporation, association, or entity; or

19 “(C) depositing such copy in the United States
20 mails, by registered or certified mail, return receipt
21 requested, duly addressed to such partnership, cor-
22 poration, association, or entity at its principal office
23 or place of business.

24 “(4) Service of any subpoena may be made upon any
25 natural person by—

1 “(A) delivering a duly executed copy to the per-
2 son to be served; or

3 “(B) depositing such copy in the United States
4 mails by registered or certified mail, return receipt
5 requested, duly addressed to such person at his resi-
6 dence or principal office or place of business.

7 “(5) A verified return by the individual serving any
8 such subpoena setting forth the matter of such service
9 shall be proof of such service. In the case of service by
10 registered or certified mail, such return shall be accom-
11 panied by the return post office receipt of delivery of such
12 subpoena.

13 “(c) ENFORCEMENT.—(1) Whenever any person,
14 partnership, corporation, association, or entity fails to
15 comply with any subpoena duly served upon him, the Post-
16 master General may request that the Attorney General
17 seek enforcement of the subpoena in the district court of
18 the United States for any judicial district in which such
19 person resides, is found, or transacts business, and serve
20 upon such person a petition for an order of such court
21 for the enforcement of this section.

22 “(2) Whenever any petition is filed in any district
23 court of the United States under this section, such court
24 shall have jurisdiction to hear and determine the matter
25 so presented, and to enter such order or orders as may

1 be required to carry into effect the provisions of this sec-
 2 tion. Any final order entered shall be subject to appeal
 3 under section 1291 of title 28. Any disobedience of any
 4 final order entered under this section by any court shall
 5 be punished as contempt.

6 “(d) DISCLOSURE.—Any documentary material pro-
 7 vided pursuant to any subpoena issued under this section
 8 shall be exempt from disclosure under section 552 of title
 9 5.”.

10 (2) REGULATIONS.—Not later than 180 days
 11 after the date of enactment of this section, the Post-
 12 al Service shall promulgate regulations setting out
 13 the procedures the Postal Service will use to imple-
 14 ment this subsection.

15 (3) TECHNICAL AND CONFORMING AMEND-
 16 MENT.—The table of sections for chapter 30 of title
 17 39, United States Code, is amended by adding at
 18 the end the following:

“3016. Administrative subpoenas.”.

19 (d) ADMINISTRATIVE CIVIL PENALTIES FOR NON-
 20 MAILABLE MATTER VIOLATIONS.—Section 3012 of title
 21 39, United States Code, is amended by adding at the end
 22 the following:

23 “(e)(1) In any proceeding in which the Postal Service
 24 issues an order under section 3005(a), the Postal Service
 25 may assess civil penalties in an amount of \$10,000 per

- 1 violation for each mailing of nonmailable matter as defined
- 2 under any provision of this chapter.
- 3 “(2) The Postal Service shall prescribe regulations to
- 4 carry out the subsection.”.

